

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

LARRY COLEMAN HICKS, #62602,

Plaintiff,

v.

**TEXAS DEPARTMENT OF CRIMINAL
JUSTICE PAROLE DIVISION, and
KARL GENTRY,**

Defendants.

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Case No. 6:19-CV-86-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Larry Coleman Hicks, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The civil action was referred to United States Magistrate Judge John D. Love. The Magistrate Judge issued a Report and Recommendation, concluding that the lawsuit should be dismissed because the claims forming the basis of the suit had been raised in at least three prior lawsuits, rendering the present case malicious. *Shakouri v. Davis*, 923 F.3d 407, 410 (5th Cir. 2019) (claim qualifies as malicious if it is virtually identical to and based on the same series of events as a claim previously brought by the plaintiff); Docket No. 4 at 1–2. The Magistrate Judge also dismissed the lawsuit based on the three-strikes provision of 28 U.S.C. § 1915(g), which prohibits incarcerated plaintiffs from proceeding *in forma pauperis* when they have previously filed at least three lawsuits or appeals that were dismissed as frivolous, as malicious, or for failure to state a claim, unless the plaintiff shows he is in imminent danger of serious physical injury. Docket No. 4 at 2–3.

Plaintiff filed Objections (Docket No. 5), stating only: "I should not have to pay another \$400 filing fee, due to civil action 6:19-cv-86 being part of the conspiracy." Docket No. 4 at 1. However, this one-sentence Objection does not dispute the Magistrate Judge's conclusions that Plaintiff's claims are malicious and are barred by the three-strikes provision of 28 U.S.C. § 1915(g). As a result, Plaintiff's Objections are without merit.

The Court, having made a *de novo* review of the objection raised by Plaintiff, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Objections by Plaintiff are without merit. The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is therefore


ORDERED that the Plaintiff's Objections are overruled and the Report of the Magistrate Judge (Docket No. 4) is **ADOPTED** as the opinion of the Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$400.00 filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as through the full fee had been paid from the outset. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **22nd** day of **July, 2019**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE